

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RASULBHAI AMTABHAI MANSURI

Versus

DIST.DEVELOPMENT OFFICER

Appearance:

MR PH PATHAK for Petitioner

MR DN PATEL for Respondent No. 1 (absent)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/06/1999

ORAL JUDGEMENT

The grievance of the petitioner in this writ petition is that the order of the respondent withholding a sum of Rs. 29,070/- from his gratuity is illegal and as such this order may be quashed and the respondent be directed to refund the aforesaid amount with 18 per cent per annum interest on this amount.

2. The brief facts giving rise to this petition are

as under:-

The petitioner was appointed as tube-well operator. Inter alia his duties were to look after the pipes and machinery on the place where he was posted. He was also allotted residential quarter at the site of the tube-well. He was to keep watch on the tube-well. Theft of 34 column pipes took place on 9.9.1993. According to the petitioner the theft occurred in his absence and he is not responsible for the theft. Under the instruction of the authorities of the respondent he lodged F.I.R. with the police. The police investigated the matter. The criminal case is pending before the competent court. According to the petitioner during police investigation it could not be worked out that theft was committed by the petitioner. Letters and notices were issued to the petitioner to explain the theft. The petitioner gave reply to the letters denying his liability and alleging that he was not involved in theft. In criminal case also it could not be found that the petitioner was guilty of theft. The petitioner retired on 1.1.1998. In order to clear pension papers and receive gratuity and other retirement benefits the petitioner was to obtain 'no dues certificate'. Since order was passed by the respondent for recovery of a sum of Rs. 29,070/- from the petitioner, pension papers could not be finalised. On one hand criminal case could not be finally decided and on the other hand pension papers of the petitioner also could not be finalised. It seems that after retirement the petitioner was in urgent need of money by way of pension and payment of gratuity and other consequential retirement benefits, hence he wrote letter Annexure-5 on 7.8.1997 that a sum of Rs. 29,070/- be recovered from his gratuity and the remaining amount and pension papers be released. Acting upon this letter, the aforesaid sum was deducted from the gratuity of the petitioner. According to the petitioner, no departmental enquiry was conducted and departmentally it was never held that the petitioner is responsible for the theft, or that he had any hand in theft of pipes. Consequently, the petitioner has filed this writ petition challenging the order for recovery of the aforesaid amount from his gratuity.

Counter-affidavit was filed by the Executive Engineer of the respondent in which inter alia it has been alleged that the petitioner did not reply to notice at Annexures-I and II of the counter-affidavit. Show cause notice was issued on 18.12.1993 which was received by the petitioner on 7.1.1994 vide Annexure-III. The petitioner gave reply to the show cause notice and denied his liability. The reply of the petitioner was not found

satisfactory, hence order was issued on 1.8.1997 for recovery of Rs. 29,070/- from the petitioner vide Annexure-IV. It is also the case of the respondent in the counter-affidavit that on 7.8.1997 a letter was written by the petitioner to the respondent that the amount which is due, namely Rs. 29,070/-, may be deducted from his pension or from gratuity or from any other post retirement benefits. Acting upon this letter the respondent thought that there was no need of any further departmental enquiry and as such on this written request of the petitioner the amount was deducted from his gratuity.

From the counter-affidavit it is clear that the order for recovery was passed mainly on two counts. Firstly that the explanation tendered by the petitioner in response to the show cause notice was not satisfactory. If this was so then departmental enquiry should have been initiated against the petitioner and unless in the departmental enquiry it was found that either the theft was committed by the petitioner or it was committed due to his negligence, no order for recovery in the nature of penalty could be passed against him. Admittedly and evidently no departmental enquiry was conducted nor any opportunity of hearing was afforded to the petitioner after receipt of his reply to the show cause notice. Mere subjective satisfaction of the respondent that the reply of the petitioner was unsatisfactory was not enough in the eyes of law for sustaining or passing the order for recovery.

The other ground for recovery is the letter sent by the petitioner. This letter cannot be construed as an admission of liability by the petitioner. On the other hand it seems that because the petitioner was neither getting his pension nor other consequential retirement benefits that he was forced to write such letter. This letter therefore cannot be interpreted to be explicit or implicit admission of liability by the petitioner. What is contained in this letter also cannot be called as an admission so as to stop the petitioner from challenging the impugned order of recovery. In the rejoinder affidavit the petitioner has explained the circumstances under which he was forced to tender this letter to the respondent and that explanation appears to be convincing.

Criminal case also could not be concluded so far nor there is any indication from the counter-affidavit that during the investigation the police found any hand of the petitioner in the so-called theft. Under these circumstances the order of recovery is totally illegal

and arbitrary. It therefore cannot be sustained. The writ petition therefore succeeds. The petitioner has not only claimed refund of Rs. 29,070/- but has also claimed interest at the rate of 18 per cent per annum. The claim of interest in the circumstances of the case cannot be accepted. No interest is allowed on the amount of gratuity as the gratuity was not unduly withheld. It was withheld only on the letter of request of the petitioner. Consequently no direction for refund of the money together with interest can be passed.

The writ petition is therefore allowed. The order withholding a sum of Rs. 29,070/- from petitioner's gratuity passed by the respondent is set aside. The respondent is directed to refund Rs. 29,070/- to the petitioner within two weeks from today. No order as to costs.

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